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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,787	06/11/2001	Steve Goddard	UNL 3055.1	1463

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EXAMINER

HU, JINSONG

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/878,787

Applicant(s)

GODDARD ET AL.

Examiner

Jinsong Hu

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,7-10,12 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 7-10, 12 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-2, 7-10, 12 and 17-19 are presented for examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Devine et al. (US 6,763,376).

4. As per claim 1, Devine teaches the invention as claimed including a system responsive to client requests for delivering data via a network to a client [col. 1, lines 11-20], said system comprising:

at least one dispatch server receiving the client requests [320, 324, 330, Fig. 3; col. 16, lines 29-33; col. 21, lines 60-65]; a plurality of network servers [col. 21, line 66 – col. 22, line 3]; dispatch software executing in application-space on the dispatch server to selectively assign the client requests to the network servers [col. 17, lines 9-15]; and protocol software, executing in application-space on the dispatch server and each of the

Art Unit: 2154

network servers, to interrelate the dispatch server and network servers as ring members of a logical, token-passing, fault-tolerant ring network [col. 11, lines 57 – col. 12, line 2], wherein the plurality of network servers are responsive to the dispatch software and the protocol software to deliver the data to the clients in response to the client requests [col.17, lines 16-19].

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 7-10, 12 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devine et al. (US 6,763,376) in view of Jorgensen (US 6,590,885).

7. As per claims 2, 10 and 12, Devine teaches the invention substantially as claimed in claim 1. Devine also teaches the communication protocol in the system is network standard protocol TCP/IP [col. 13, line 65 – col. 14, line 3]. Devine does not specifically disclose an Open Source Interconnection (OSI) and the steps of switching of the client requests at layer 4 of the OSI reference model, translates addresses associated the client requests at layer 2 of the OSI reference model and reconstruction software to coordinate state reconstruction after fault detection. However, Jorgensen on the other hand teaches an Open Source Interconnection (OSI) and the steps of

Art Unit: 2154

switching of the client requests at layer 4 of the OSI reference model, translates addresses associated the client requests at layer 2 of the OSI reference model and reconstruction software to coordinate state reconstruction after fault detection [col. 41, line 67 – col. 42, line 6; col. 42, line 19 – col. 45, line 38; col. 46, line 62 – col. 48, line 5]. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Devine and Jorgensen because Jorgensen's OSI is a standard model in the art for communicating data packet with TCP/IP protocol. One of ordinary skill in the art would have been motivated to utilize a standard model in the system to make the system easily being configured and integrated.

8. As per claim 7, Devine teaches the protocol software communicates at any one of the layers of the reference model [Fig. 5A].

9. As per claims 8 and 9, Jorgensen teaches the reference model is the Open Source Interconnection (OSI) reference model, and wherein the dispatch software performs switching of the client requests at layer 7 of the OSI reference model and then performs translating addresses and switching of the client requests at layer 3 of the OSI reference model [col. 42, lines 33 – col. 45, line 38; col. 47, line 56 – col. 48, line 5].

10. As per claim 17, Devine teaches the invention substantially as claimed including a system responsive to client requests for delivering data via a network to a client [col. 1, lines 11-20], said system comprising:

Art Unit: 2154

at least one dispatch server receiving the client requests [320, 324, 330, Fig. 3; col. 16, lines 29-33; col. 21, lines 60-65]; a plurality of network servers [col. 21, line 66 – col. 22, line 3]; dispatch software executing in application-space on the dispatch server to selectively assign the client requests to the network servers, and protocol software, executing in application-space on the dispatch server and each of the network servers to interrelate the dispatch server and network servers as ring members of a logical, token-passing, fault-tolerant ring network, wherein the plurality of network servers are responsive to the dispatch software and the protocol software to deliver the data to the clients in response to the client requests [col. 11, lines 57 – col. 12, line 2; col. 17, lines 9-19].

11. Devine does not specifically teach the system is structured according to an Open Source Interconnection (OSI) reference model. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Devine and Jorgensen because Jorgensen's OSI is a standard model in the art for communicating data packet in TCP/IP protocol. One of ordinary skill in the art would have been motivated to utilize a standard model in the system to make the system easily being configured and integrated.

12. As per claim 18 and 19, Jorgensen teaches the step of translates addresses associated with the client requests at layer 2 and layer 3 of the OSI reference model [col. 42, lines 19-67].

Conclusion

13. Applicant's arguments filed on 9/28/05 for claims 1-2, 7-10, 12 and 17-19 have been fully considered but they are not deemed to be persuasive.

14. In the remarks, applicant argued in substance that (1) Devine does not teach any dispatch software executing in the application-space on the dispatch server; (2) Devine does not teach protocol software executing in application-space on the dispatch server and each of the network server, interrelating the dispatch server and the network servers as ring members; (3) Devine does not teach a fault-tolerant ring network; (4) Jorgensen does not teach dispatch software executing in the application-space on the dispatch server.

15. Examiner respectfully traverses applicant's remarks:

A. As to point (1), applicant fails to consider the teaching of the Devine's reference for receiving the requests from user applets by dispatch server [i.e., StarOE proxy] and forwarding the requests to the appropriate network server [col. 16, lines 29-33; col. 17, lines 9-19], all of these functions are implemented by executing software [i.e., proxy process] on the dispatch server. Thus, Devine does teach dispatch software executing in the application-space on the dispatch server.

B. As to points (2) and (3), applicant fails to consider the teaching of the Devine's reference for forwarding user's request by dispatch server to network servers [col. 16, lines 29-33], which are members of a ring network, and the whole network is a Ethernet backbone network [col. 11, line 65 – col. 12, line 2]. Thus, Devine does teach

Art Unit: 2154

protocol software executing in application-space on the dispatch server and each of the network servers, and interrelating the dispatch server and the network servers as ring members.

C. As to point (4), applicant fails to consider the teaching of the Devine's reference for all the limitations except switching request in layer 4 and translating address in layer 2, there is no reason to require the Jorgensen's reference to show these limitations again. Furthermore, Jorgensen's reference is added for teaching the defective of Devine's reference, and the combination of both teaching is obvious to an ordinary person in the art and implemented. Thus, Jorgensen is still a relevant prior art reference.

Accordingly, Devine and Jorgensen are still relevant prior art references.

16. THIS ACTION IS MADE FINAL. See MPEP §706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2154


18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jinsong Hu

December 23, 2005


JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
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